

Office of the State Inspector General

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Review of the Community Residential Care Facilities Program, Department of Health and Environmental Control

I. Executive Summary

The Office of the State Inspector General (SIG) initiated this review predicated on a credible complaint alleging substantial health and safety deficiencies in the care of a resident placed in a Community Residential Care Facility (CRCF), which was licensed and regulated by the Department of Health and Environmental Control (DHEC). CRCF facilities, commonly known as “assisted living,” provide housing, food, and care to individuals who are unable to live independently, but do not need skilled nursing care. The CRCF population varied greatly depending on several factors, principally the facilities’ revenue source from private pay (as high as \$5,000/month) or Medicaid (\$1,351/month), as well as size ranging from four beds to 184. Initial investigation revealed this complaint may be just a symptom of systemic health and safety deficiencies throughout DHEC’s CRCF Program, which regulates 471 CRCFs serving approximately 17,000 vulnerable clients, primarily the elderly and disabled.

DHEC subject matter experts candidly identified a group of CRCFs with systemic deficiencies, as did partners in sister State agencies and advocacy groups. They only differed on the breadth of the systemic deficiencies among the 471 CRCFs. A federally funded non-profit, Protection & Advocacy for People with Disabilities, Inc. (P&A), produced a 2013 report citing, “Thousands of poor South Carolinians with disabilities continue to live in grossly inadequate conditions in community residential care facilities across the state...The report’s findings revealed continued lack of oversight of facilities that are dirty, provide inadequate food, do not administer medications correctly, violate residents’ rights, and do not provide protection from potential harm (see link at <http://pandasc.org/2013/12/new-report/>).” Witnesses often defaulted assessing CRCFs based on if they would place a relative in a CRCF, which tended to skew assessments more negative than strictly applying the state law.

Perhaps the best evidence of the scope of the problem came from DHEC’s CRCF inspectors. Eleven inspectors rated CRCFs each had previously inspected with the following results: 4% unsatisfactory living conditions; 6% mixed ratings of unsatisfactory or “at risk” barely able to maintain satisfactory conditions; 10% “at risk” barely able to maintain satisfactory conditions; 70% satisfactory living conditions; and 10% not rated. Of interest, new inspectors rated CRCFs unsatisfactory at a higher frequency (17%), while senior inspectors were less critical with unsatisfactory ratings (6%). The senior inspectors seemed to factor in the reality many clients in these “at risk” facilities would not have other options if their CRCF was closed given the finite number of CRCF Medicaid beds in a community. Subsequent to the SIG’s field work, DHEC initiated an action plan identifying 25 (5.3%) chronically deficient CRCFs requiring heightened inspections and aggressive remediation of deficiencies.

The review concluded the risk of unsatisfactory living conditions was not systemic throughout all 471 CRCFs, but rather was a subset tending to have smaller bed capacity and clients’ reliance on a Medicaid supplement. This unaddressed CRCF population was not due to a lack of DHEC inspections and corresponding reports. Rather, it was due to DHEC’s ineffective process of using these inspection reports to drive positive change, or, as a last resort, suspend or close a recalcitrant CRCF unwilling or incapable of providing satisfactory living conditions. This was a process problem and not a people problem. Personnel from involved State agencies and advocacy groups exhibited the passion taxpayers would and should expect.

During a 15 month period in 2014-2015, DHEC cited 465 licensed CRCFs with 8,669 inspection violations: 4,205 (49%) Class I Violations (imminent danger to the health, safety, or well-being of the resident); 2,766 (32%) Class II Violations (a negative impact on the health, safety, or well-being of the resident); and 1,698 (19%) Class III Violations (lesser impact citations). Despite the volume and seriousness of the citations, it took a protracted effort measured in many years, or worse, to successfully address a recalcitrant CRCF unwilling or unable to resolve Class I violations.

The reason for this elongated process was DHEC's inspections only itemized violations geared towards a CRCF developing its own remediation plan which would be re-inspected within 12 months, sometimes sooner if CRCF Program Management personally engages an under-performing CRCF. It generally took multiple inspections with excessive violations for DHEC Program Managers to recommend a CRCF to DHEC's enforcement mechanism for formal action. Formal action started with another agreement, known as a Consent Order, where the CRCF agreed to take action on the same items it previously failed to remedy. The CRCF generally paid a small percent of its fine (20%) and the Consent Order was completed within a year seemingly based on final payment and 12 months passing rather than confirmation the violations had been remedied. Then, a recalcitrant CRCF's very next inspection resumed the pattern of repeat violations. **Yet, throughout this multi-year process having a great likelihood of never culminating, the clients of the recalcitrant CRCFs continued to live in unsatisfactory living conditions** (SIG emphasis).

Further complicating addressing recalcitrant CRCFs were the overlapping interests from five other State agencies, some with a degree of oversight responsibilities. These agencies clearly saw their role as subordinate to DHEC, yet these other agencies' involvement had a diluting effect of DHEC's clear ownership of addressing unsatisfactory CRCFs. Responsibility needs to be singularly focused with DHEC to address recalcitrant CRCFs, and the other agencies need to be integrated into an overall strategy without clouding DHEC's accountability for results.

The direction for improvement is sharpening DHEC's audit process to a risk based model to target resources on "high risk" CRCFs to preferably support them to provide satisfactory living conditions or develop evidence to allow adjudicators to take swift action. The risk based audit process starts with the extra step during annual inspections "to make the call" on whether the aggregate inspection violations creates a "high risk" CRCF with a "high risk" of operating with unsatisfactory living conditions. The audit process then effectively separates these potential high risk facilities needing high intensity intervention from those CRCFs with trustworthy management and the capacity to remedy inspection violations in the ordinary course of business. Being identified by a single inspection as "high risk" should not be determinative as having unsatisfactory living conditions, but rather places this CRCF in a high risk pool managed by senior, experienced inspectors. These senior inspectors re-inspect the CRCF for an expert determination if, and to what extent, the CRCF operates in an overall unsatisfactory living conditions. Then, these senior inspectors, who are capable of a quality root cause analysis, establish a DHEC imposed remediation plan, rather than CRCF self-determined plan. Then, set realistic deadlines measured in days, weeks, or a few months, rather than years or worse.

This audit approach will confront high risk CRCFs in an expedited timeframe with a consistent, objective, and fair intervention geared towards support. The CRCF owner will have the simple choice of conforming to satisfactory standards or face **with certainty** a series of additional follow-up inspections in a compressed time frame **given the existing risk to vulnerable clients**. This risk based audit approach follows the basic management tenant that the certainty of consequences prevents offenses.

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II. Background

A. Predicate

This review was predicated on a credible complaint alleging substantial health and safety deficiencies in the care of a resident placed in a Community Residential Care Facility (CRCF) in Kershaw County, South Carolina, which was licensed and regulated by the Department of Health and Environmental Control (DHEC). Initial investigation with subject matter experts, non-profit advocacy groups, and CRCF inspection reports revealed this single incident might be a symptom of systemic health and safety deficiencies throughout DHEC's CRCF Program, which regulates 471 CRCFs with the approximately 17,000 vulnerable clients, primarily elderly and disabled.

B. Scope & Objectives

This review's scope and objectives were:

- Assess the risk of a vulnerable population of elderly and disabled citizens residing in CRCFs living in unsatisfactory health and safety conditions;
- Evaluate DHEC's CRCF Program inspection process capabilities to identify and address CRCFs with unsatisfactory health and safety living conditions;
- Recommend opportunities to improve the CRCF Program.

Reviews by the SIG are conducted in accordance with professional standards set forth by the Association of Inspector General, often referred to as the "Green Book."

C. CRCF Program Description

DHEC licensed and monitored 471 CRCFs with a total of 17,448 beds across the state. The licensed bed capacity represented the maximum number of residents CRCFs may serve in accordance with their licenses. CRCF facilities provided housing, food, and care to individuals who were unable to live independently, but who did not need skilled nursing care. The core services provided include, but are not limited to:

- Three meals a day with snacks;
- Assistance with eating, bathing, dressing, toileting and walking;
- Medication assistance;
- Housekeeping services;
- 24 hours, seven days a week staffing; and
- Transportation to medical appointments.

As a CRCF resident, an individual has the right to be treated with dignity and respect, to have freedom of choice and a physical environment that is safe, secure, sanitary and well-maintained in accordance with DHEC's CRCF Standards (R.61-84; R.61-25) and the Bill of Rights for Residents of Long-Term Care Facilities (**Appendix B**).

There were a wide variety of CRCFs to meet the needs of a diversified population. CRCFs ranged in size from four beds to 184 licensed beds as described in the following table:

Category	# of Beds per Facility	# of Facilities	Total # of Beds
Mom & Pop	4-9	135 (29%)	918 (5%)
Small	10-49	182 (39%)	4,257 (24%)
Medium	50-99	119 (25%)	8,081 (47%)
Large	100-184	35 (7%)	4,192 (24%)
Total	n/a	471 (100%)	17,448 (100%)

CRCFs were also differentiated by their source of revenue. Private pay could be as high as \$5,000 per month, while Medicaid supplemental was \$1,351 per month. Clients using Medicaid supplemental first applied their monthly social security income/disability check to the fixed \$1,351 CRCF fee, and then Medicaid supplements paid the difference direct to the CRCF. CRCFs' revenue streams ranged on the spectrum from completely private pay to completely Medicaid supplemental, with many facilities having a combination of the two revenue sources.

III. Data sources to Assess the CRCF Program

The SIG collected data from multiple optics to understand the risk of a vulnerable population of elderly and disabled citizens residing in unsatisfactory living conditions in CRCFs, as well as the CRCF Program's inspection process capabilities to identify and address CRCFs with unsatisfactory living conditions. Data included subject matter experts, CRCF Program inspection reports, other agency reports, CRCF administrators, and CRCF inspectors on the "front line."

A. Protection and Advocacy for People with Disabilities, Inc.

Established in 1977, Protection and Advocacy for People with Disabilities, Inc. (P&A) was mandated by state and federal law to protect the legal, civil, and human rights of people with disabilities in South Carolina. P&A had successfully conducted over 1,322 unannounced CRCF inspections. These inspections were resident focused addressing resident's access to clothing and hygiene, adaptive equipment, medical care/medications, transportation, and personal needs allowance. In addition, the inspections also examined facilities for general fire and safety hazards, maintenance, housekeeping, and furnishings.

In 2009, P&A issued a report titled, "No Place to Call Home," which was followed up in 2013 with a second report titled, "Still No Place to Call Home (see link at <http://pandasc.org/2013/12/new-report/>)." The report stated, "Thousands of poor South Carolinians with disabilities continue to live in grossly inadequate conditions in community residential care facilities (CRCFs) across the state...The report's findings reveal continued lack of oversight of facilities that are dirty, provide inadequate food, do not administer medications correctly, violate residents' rights, and do not provide protection from potential harm."

P&A noted while many CRCF owners are committed to operating facilities providing a good quality of care, the lack of effective oversight puts all residents of CRCFs at risk of harm. P&A's two reports identified a lack of progress in improving conditions in CRCFs. The most recent report outlined five recommendations to improve protection for people with disabilities who live in CRCFs statewide, with emphasis on more enforcement options against frequently cited facilities and administrators. The recommendations conveyed, "The state and

individual residents are paying for services that do not meet the standard of care established by regulation to ensure safety and accountability in these facilities.”

DHEC actively supported and commended P&A’s work. However, DHEC pointed out P&A findings do not necessarily translate to violations of the laws administered by DHEC nor necessarily serve as bases for enforcement actions against a CRCF. DHEC proffered P&A reviews are at a different angle than its inspections driven by criteria established by state law.

B. DHEC Inspection Violations for Period 7/1/2014 through 9/25/2015

DHEC’s annual inspections of CRCFs used four checklists. These checklists set forth 131 requirements examined during the inspection (see **Appendix C**). Further, a single requirement could be violated multiple times, such as multiple patient files failing to conduct a written assessment within 72 hours of admission.

During the period of 7/1/2014 – 9/25/2015, DHEC cited 465 licensed CRCFs inspected for 8,669 violations as follows:

- 4,205 (49%) Class I Violations - imminent danger to the health, safety, or well-being of the resident
- 2,766 (32%) Class II Violations - negative impact on the health, safety, or well-being of the resident
- 1,698 (19%) Class III Violations - lesser impact citations

One CRCF had more than 100 violations during this period. An additional twenty-one CRCFs had between 50-100 violations totaling 1,407 violations during this period with numerous repeated violations.

The 4,205 Class I Violations were categorized as follows:

- 1,682 (40%) Staff/Training
- 1,658 (40%) Resident Care/Medications
- 454 (10%) Fire & Life Safety
- 411 (10%) Housekeeping

C. State Fire Marshal Inspection Violations for Period 11/12/2012 through 11/12/2015

During the period 11/12/2012 – 11/12/2015, the State Fire Marshal inspected 431 CRCFs and cited 2,710 violations as follows:

- 2,039 (75%) Class I Violations - imminent danger to the health, safety, or well-being of the resident
- 531 (23%) Class II Violations - negative impact on the health, safety, or well-being of the resident
- 40 (2%) Class III Violations - lesser impact citations

One CRCF had 40 violations during this period. An additional ten CRCFs had between 20 - 40 violations totaling 275 violations during this period with numerous repeated violations.

D. Enforcement Actions for the Period 1/1/2003 through 6/30/2015

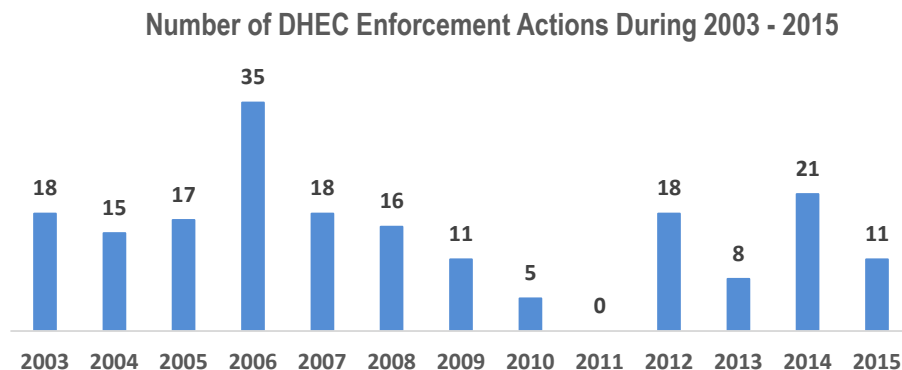
The core problem raised by interviewees, both inside DHEC and external partners, was DHEC's lack of timely enforcement capabilities of CRCFs recalcitrantly failing to seriously address their unsatisfactory living conditions for clients. DHEC has an enforcement program with specific protocols (see **Appendix D**). This program resulted in the following enforcement actions during the period of 2003 through June 2015:

<u>Enforcement Action</u>	<u>Frequency</u>
License Revoked	9
License Suspended	31 [#]
Admissions Suspended	3
Monetary Penalty Letters	25 [@]
DHEC Consent Orders	120 [@]
Administrative Orders	3
Facility Denied a License	2
Total	193

[@] \$1,130,511 fines (20% estimated actual payments).

[#] license suspended based upon facilities' failure to comply with structural standards after undergoing a change of ownership after July 27, 2001.

A review of the enforcements over the past 13 years averaged 15 enforcements/year. The specific annual enforcements for this time period were:



To better understand the issue of timely enforcement capabilities, the SIG identified five currently operating CRCFs reported by witnesses and supported by DHEC inspection reports as having overall unsatisfactory living conditions for many years (see **Appendix E**). These five CRCFs' inspection and enforcement actions since 2010 were chronologically examined yielding the following results:

- **CRCF #1:** Four inspection reports beginning on 5/20/2011 totaled 115 violations (41 Class I) of which 88 were repeat violations. This culminated in a 2/5/2013 Consent Order. Six inspections over the next 17 months yielded 120 violations (66 Class I) of which 54 were repeat violations, yet inexplicably DHEC considered the pending Consent Order satisfied with the final fine payment on 7/7/2014. Over the next 15 months, with the most recent being 10/2/2015, three inspections yielded 55 violations (29 Class I) and 19 repeat violations.

- **CRCF #2:** Four inspection reports beginning on 11/11/2010 totaled 76 violations (50 Class I) of which 25 were repeat violations. This culminated in an 8/7/2012 Consent Order. Two inspections over the next year yielded 24 violations (17 Class I) and 10 repeat violations. On 8/13/2013, DHEC assessed a \$500 fine for non-compliance with pending Consent Order. The next inspection on 10/24/2013 yielded 11 violations (8 Class I) and 3 repeat violations, yet inexplicably DHEC considered the pending Consent Order satisfied with the final payment on 12/12/2013. Five subsequent inspections, with the most recent being 10/23/2015, yielded 56 violations (19 Class I) and 24 repeat violations.
- **CRCF #3:** Four inspection reports beginning on 5/24/2012 totaled 58 violations (31 Class I) of which 49 were repeat violations. On 7/23/2014, DHEC executed a Consent Order that assessed a \$5,000 fine based on repeated violations. Two inspections over the next year yielded 50 violations (35 Class I) and 17 repeat violations, yet inexplicably DHEC considered the pending Consent Order satisfied with the final payment on 7/24/2015. It was noted that during 10 months, the CRCF was operated by an administrator with an expired license.
- **CRCF #4:** Five inspection reports beginning on 5/11/2012 totaled 35 violations (24 Class I) of which 11 were repeat violations. This culminated in a 5/1/2014 Consent Order imposing a \$10,000 fine. Over the next 18 months five inspections yielded 150 violations (136 Class I) and 93 repeat violations. On 2/4/2015, DHEC assessed a Call-in Penalty of \$8,800 for repeated violations and non-compliance with the pending Consent Order. DHEC considered the pending Consent Order satisfied with the final payment of the \$10,000 fine. In addition, DHEC executed an Administrative Order on 4/24/2014 to the CRCF Owner imposing a \$5,000 fine for operating an unlicensed facility which has not been paid.
- **CRCF #5:** Two inspection reports beginning on 1/29/2010 totaled 24 violations of which 24 were Class I violations. This culminated in a 2/5/2013 Consent Order imposing a \$4,200 fine. On 5/18/2011, DHEC considered the pending Consent Order satisfied with receipt of the final payment. Six inspections over the next 19 months yielded 124 violations (51 Class I) and 53 were repeat violations. On 7/23/2014, DHEC executed another Consent Order that assessed a \$20,000 fine based on violations volume and repeated violations. The next three inspections yielded 53 violations (27 Class I) and 19 repeat violations, yet inexplicably DHEC considered the pending Consent Order satisfied with the final payment on 9/24/2015.

Subject matter experts identified all five of these CRCFs as having systemic and unresolved unsatisfactory living conditions. Yet, despite this common knowledge supported by years and years of inspection reports, vulnerable elderly and disabled clients continued to live in unsatisfactory living conditions while oversight seemingly traded paper with recalcitrant CRCFs owners/administrator (SIG emphasis).

Many witnesses cited the Peachtree Manor CRCF as an example of this systemic problem. Clients were so at risk while DHEC's enforcement actions eked along, another oversight agency sent personnel to check on clients every week during the nearly two year process of administratively closing this facility. The enforcement actions surrounding Peachtree Manor began in 2006 and the Administrative Law Court (ALC) Order upholding DHEC's revocation of Peachtree's license occurred in 2008. Two contemporaneous news articles of this incident vividly illustrated conditions for clients at Peachtree Manor and captured the State's bureaucratic posture in its inability to effectively address a recalcitrant CRCF (see **Appendix A**).

A more recent example cited by witnesses was the Robin's CRCF. Robin's was inspected on 10 occasions by DHEC during the period of 7/20/2011 – 5/21/2013, cited for over 80 violations that included numerous Class I

Violations and repeat violations. In September 2013, DHEC initiated enforcement conferences with Robins, which failed to attend on multiple scheduled meetings. Based on Robin's disengagement with DHEC's regulatory authority, this ultimately led to a May 2014 license revocation. However, Robins filed a request for a contested case hearing with the ALC. The ALC upheld DHEC's license revocation, but it was not final until January 11, 2016, all the while these clients had to endure the ongoing poor treatment and unsatisfactory living conditions for well over two years from DHEC's initial attempted enforcement action. Astonishingly, although Robin's CRCF license has been revoked, the Robin's Administrator is still licensed by LLR to operate another CRCF (see link for ALC order http://oig.sc.gov/Documents/Robins_CRCF_Administrative_Law_Court_Order.pdf).

E. CRCF Program Inspector's Controlled Self-Assessment

Data from every source described the CRCF Program as having systemic problems with CRCFs operating with unsatisfactory health and safety conditions. To better understand this risk described in a variety of broad brush manners, the SIG conducted a controlled self-assessment with the CRCF Program Inspectors.

Eleven inspectors rated the CRCFs each had previously inspected with the following results: a 4% unsatisfactory living conditions; 6% mixed ratings of unsatisfactory or "at risk" barely able to maintain satisfactory conditions; 10% "at risk" barely able to maintain satisfactory conditions; 70% satisfactory living conditions; and 10% not rated. Of interest, new inspectors rated CRCFs unsatisfactory at a higher frequency (17%), while senior inspectors were less critical with unsatisfactory ratings (6%). The senior inspectors seem to factor in the reality many clients in these "at risk" facilities would not have other options if their CRCF was closed given the finite number of CRCF Medicaid beds in a community.

Ten percent of the CRCFs were rated unsatisfactory by at least one inspector. This 10% of CRCFs were cited with 24% of the inspection violations over the prior 15 month period, and were almost all dependent upon Medicaid supplemental clients.

Discussion of the above quantitative results with Program Inspectors surfaced a number of unique consensus qualitative observations:

- The driver in CRCFs chronically operating with unsatisfactory living conditions was its owner/administrator commitment to meet standards. Operating CRCFs reliant on clients using the maximum Medicaid supplement (\$1,351/month) created a thin profit margin, particularly with small CRCFs where the problem was most prevalent. If the owner/administrator's commitment to standards was secondary to the profit motive, cutting corners on standards became the norm to save costs and reciprocally increase profits. Not one inspector was aware of a highly motivated owner/administrator operating a CRCF with unsatisfactory living conditions.
- A close second factor was poor financial management capabilities. It appeared due to the thin profit margin, an unplanned or unexpected large expense or revenue loss (i.e., empty beds) had the potential to completely disrupt CRCF operations due to a lack of working capital. Absent financial planning, budgeting, and practical cost containment, client's services quickly become compromised by the sheer lack of money requiring corner cutting of standards.
- The recalcitrant CRCF owners knew DHEC had weak enforcement capabilities, so they did not fear getting caught cutting corners or level of care. If caught by an inspection, these CRCFs knew they

could outlast the annoyances of the process's paper chase without substantive change or negative consequences.

- The most important attribute for a successful CRCF was a highly motivated and engaged administrator who was on-site more than expected to ensure the 24/7 staff is properly trained and working effectively. When the administrator disengages, the 24/7 staff slip as well and living standards erode.

Subsequent to the SIG's field work, DHEC initiated an action plan identifying 25 (5.3%) chronically deficient CRCFs requiring heightened inspections and aggressive remediation of deficiencies.

IV. Site Visits to "Mom & Pop" CRCFs

Mom & Pop CRCFs (9 beds or less) have the thinnest profit margin and were considered the highest risk CRCF. The SIG, based on subject matter expert input, selected and assessed two Mom & Pop CRCFs considered having unsatisfactory living conditions and one considered to have exceptional living conditions.

A. Unsatisfactory Living Conditions

Both facilities were single family dwellings located in moderate to low income neighborhoods. The facilities had four and five clients, respectively, representing only a 60-70% occupancy rate creating an immediate financial strain due to these facilities disproportionately high fixed overhead burdens. The most obvious deficiency was each facility, likely based on aforementioned financial strain, appeared to rely on one staff member to live at the facility to meet the clients' needs, as opposed to the State requirement staff must be awake 24 hours a day. Essentially, these facilities relied on one person to work all waking hours and be available to be awakened at night if there was an emergency. The lack of a robust staff required by State law placed the CRCF in a nearly impossible position of keeping up with daily requirements and recurring functions, let alone the predictable crises from clients.

The client's rooms were sparse, common areas equally sparse, and poorly heated. In one facility, the clients all were wearing winter hats and coats watching TV; the facility seemed as cold inside as the temperature was outside. The clients seemed reasonably situated, except for a new client who had a long list of complaints from medicines, food, and doctor transportation. At one of the facilities, the clients indicated they received cereal for breakfast and sandwiches for lunch/dinner. One facility smelled of urine, had rooms seemingly belonging to a hoarder, and the team was greeted with a large dead cockroach in the foyer upon entry.

An incident illustrating one of the CRCF administrator's recalcitrant attitude occurred when the accompanying DHEC inspector requested to see the clients' records. The administrator rustled some papers on a table only to advise the records were locked in the office and the administrator could not locate the key. The DHEC inspector advised this same administrator used that exact same stalling technique on a prior inspection.

B. Satisfactory Living Conditions

The difference was immediately noticeable from the maintenance of the exterior and the cleanliness of the interior. The clients seemed much more alert and engaging, and clearly viewed this facility as a home. The attention to detail from food menus, snacks, client engagement, and sanitation was dramatically ahead of the unsuccessful facilities. The clients seemed well cared for, clean, and they commented the meals were good.

The atmosphere was much more conducive to the client's physical and mental well-being. The facility was at authorized capacity maximizing revenue to operate a high fixed overhead operation.

This CRCF's administrator was highly experienced and was able to provide a compelling analysis that the "Mom & Pop" CRCFs have a razor thin profit margin if operated to state standards by a skilled and motivated administrator. This CRCF administrator assessed CRCFs having unsatisfactory living conditions as much higher than the controlled self-assessment estimate of 4-10%. This administrator rated the motivation of a CRCF administrator to serve clients and financial skills as the two most important ingredients for a successful operation. This CRCF administrator acknowledged that the recalcitrant CRCFs know DHEC's enforcement was not effective, which only enabled this subgroup not to change.

The clients at the unsatisfactory CRCFs seemed not to be mistreated in the traditional sense. They were more "untreated" which was a form of abuse. The purpose of CRCFs was assisted living in a satisfactory living condition, both physically and emotionally. The successful CRCF just did what it was designed to do – provide assisted living, while the unsatisfactory CRCFs seemed more akin to a boarding house.

V. Other State Agencies Involved in the CRCF Program

All five other State agencies with equities in the CRCF Program recognized the inability to address recalcitrant CRCFs providing unsatisfactory living conditions. These five were: SC Department of Labor, Licensing & Regulation (LLR); SC Department of Health & Human Services (SCDHHS); SC Department of Mental Health (DMH); SC Department of Social Services (DSS); and the Lieutenant Governor's Office on Aging. These agencies' unique roles pertain to oversight, funding, and/or client services/placements.

As with most of State government, employees were collegial and attempted to coordinate in good faith. Each attempted to coordinate or forward relevant information to each other, using DHEC as the central location. Several agencies proffered they do a level of on-site reviews resulting, again, in reports being sent to other partners, primarily DHEC. However, this collegiality and attempted teamwork over CRCFs had only dimmed an individual agency to "grab the ball" and solve the problem of addressing recalcitrant CRCFs providing unsatisfactory living conditions. Each agency had unique roles or functions, but each was clearly subordinate in its authority and capability to DHEC in driving needed change in recalcitrant CRCFs.

A. SC Board of Long Term Health Care Administrators, LLR

SC Long Term Health Care Administrators Board (LTHC Board) under the auspices of LLR, licensed the CRCF Administrators, managed continuing educational requirements, and investigated/adjudicated professional misconduct complaints. LLR's FY2014 – FY2015 Annual Report indicated there were 579 licensed CRCF Administrators; 9 Provisional Licensed CRCF Administrators; and 143 dually licensed CRCF/Nursing Home Administrators.

For many disciplinary proceedings, the LTHC Board primarily relied on DHEC inspections and Consent Orders for CRCFs as the primary source of data. The LTHC disciplinary actions tended to follow DHEC's lead when sanctioning CRCF administrators. In the past nine years (2007-2015), the LTHC Board issued 78 sanctions for CRCF Administrators, which included four license revocations; eight license suspensions; five sanctioned for operating with an expired license; three for operating an unlicensed facility; 13 voluntarily relinquished their licenses; and 45 were misconduct/non-compliance with applicable state regulations. Sanctions associated with

DHEC inspection reports of substantial non-compliance generally included a one year suspension which was immediately stayed, followed by a one year probationary status subject to specific conditions. It appeared the probationary status was lifted, much like DHEC's probationary discipline, without independent assurance the substantial non-compliance was remedied. A subject matter expert advised it has been discussed periodically over the past 10 years of transferring the CRCF Administrator's licensing function to DHEC to consolidate the authority, responsibility, and accountability for the State to effectively monitor and regulate CRCFs and the administrators.

B. South Carolina Department of Mental Health

The South Carolina Department of Mental Health (DMH) assisted patients with mental illness in securing appropriate local housing. The DMH implemented a Memorandum of Agreement (MOA) with 100 CRCFs outlining the responsibilities of the community mental health centers and the community residential care facilities in providing care and treatment to patient in CRCFs. The majority of the (82%) of CRCF patients served had a diagnosis of a severe and persistent mental illness. DMH did periodic on-site visits, as well as paid P&A \$75,000/year to conduct 72 CRCF inspections annually.

C. Optional State Supplementation (OSS) Program, SCDHHS

The SCDHHS provided financial supplementation to Social Security Disability Insurance/ Supplemental Security Income (SSDI/SSI) beneficiaries through Optional State Supplementation (OSS), a state-funded program. Qualifying SSDI/SSI beneficiaries used their monthly benefit check to pay towards a fixed monthly rate of \$1,351 by CRCFs and the OSS paid the difference (\$600-\$800/month) direct to the CRCF. Although the OSS had the authority to audit CRCFs, as well as potential future program assurance plans, it currently deferred to DHEC. Approximately 350 CRCFs (75%) participated in the OSS Program. As an aside, OSS contributed \$25,000 to DMH to pay P&A \$75,000/year to fund its inspection efforts.

During interview, the OSS Program advised many CRCFs were missing opportunities to increase OSS funding by an additional \$200/month under the Optional Supplemental Care of Assisted Living Participants (OSCAP) Program. The OSCAP service provided additional reimbursement to facilities to provide assistance with personal care for residents who met certain medical criteria. OSS was attempting to increase its communication to CRCF administrators to address this funding issue. OSS did periodic on-site reviews of the CRCFs that received OSCAP funding.

D. South Carolina Department of Social Services

The South Carolina Department of Social Services (DSS) provided social services to eligible adults through direct provision of services by DSS staff and through referrals to other social service agencies for services. DSS also made direct placements of its clients into CRCFs. Adult Protective Services had a role in investigating individuals who are 18 or older and were victims of actual or potential abuse, neglect or exploitation, as well as a role in relocating clients from closed CRCFs.

E. State Long Term Care Ombudsman, Lieutenant Governor's Office on Aging

The South Carolina Long Term Care Ombudsman Program (LTCO) was governed by the federal Older Americans Act and by the South Carolina Omnibus Adult Protection Act. The LTCO administered the

statewide program through ten regional offices. The LTCO investigated complaints about the abuse, neglect and exploitation of residents in CRCFs. The LTCO worked with the residents, facility staff and the resident's family or legal representative to resolve problems and concerns about the quality of care and services residents received and advocated for public policy initiatives affecting long-term care. During calendar year 2015, LTCO investigated 3,683 Quality of Care Complaints at CRCFs.

VI. Direction for Improvement: Risk Based Inspections

Currently, absent a crisis, such as no staff or no medicine at a CRCF during an inspection, DHEC has no capability to timely address CRCFs operating in unsatisfactory living conditions. DHEC can only provide the inspection report to the CRCF, who then were required to self-report a corrective action plan in 15 days. This correction plan will not be followed-up by DHEC until the next annual inspection or potentially in 6-7 months if DHEC management makes a discretionary decision to prioritize an under-performing CRCF. After a second inspection with repeat non-compliance of a substantial nature, DHEC has the option to start a several month process of a Consent Order where the CRCF voluntarily agrees to remedy inspection items it has previously agreed to do but failed. This Consent Order then may be forwarded to LLR who may sanction the CRCF administrator, but the sanction is normally a fine/probation essentially following DHEC's lead in its sanctions. This pattern then starts over with the only possible rare exception of a CRCF being recommended for an Administrative Order from DHEC, which then can be appealed to the Administrative Court. As evidenced by this reviews' data with particular attention of tracking this process in five egregious, unsatisfactory CRCFs, this enforcement paper cycle has likely no end while clients continue to live in unsatisfactory living conditions. (see **Appendix E**).

Why? The audit and adjudication process is designed to support the estimated 90% of CRCFs whose management acts in good faith to resolve inspection findings to maintain a healthy living condition for their clients. This methodical escalating administrative oversight system may be just fine for many types of non-compliance not directly causing unsatisfactory living conditions. However, **this process is inconsistent with clients living in unsatisfactory living conditions** while the remedial administrative process grinds on with a low likelihood of really addressing a recalcitrant non-compliant CRCF. This 4-10% of CRCFs with patterns of systemic non-compliance resulting in persistent unsatisfactory living conditions is the problem, which is ineffectively addressed by the current inspection/enforcement/adjudication process.

The direction for improvement is to develop a sound, defensible, and simple risk based audit approach to clearly identify a "high risk" CRCF with a "high risk" of unsatisfactory living conditions by "making the call" during a general inspection. The DHEC 131 item inspection checklists must be distilled into a single decision, which then can justify rigorous follow-up and support to "high risk" CRCFs, while the residual estimated 90% of CRCFs with trustworthy management and the capacity to remedy inspection violations can continue in the current system remedying violations in the ordinary course of business.

Being identified by a single inspection as "high risk" is not determinative as having unsatisfactory living conditions, but rather places this CRCF in a high risk pool managed by senior, experienced inspectors. These senior inspectors re-inspect the CRCF for an expert determination if, and to what extent, the CRCF operates in an overall unsatisfactory living conditions. Then, these senior inspectors will be capable of a quality root cause analysis establishing a DHEC imposed remediation plan, rather than a CRCF self-determined plan. Then, set realistic deadlines measured in days, weeks, or a few months, rather than years, or worse, to address this unacceptable risk.

This audit approach will confront high risk CRCFs in an expedited timeframe with a consistent, objective, and fair intervention geared towards support. The CRCF owner will have the simple choice of conforming to satisfactory standards or face **with certainty** a series of additional follow-up inspections in a compressed time frame **given the existing risk to vulnerable clients**. If follow-up inspections are failed, this will provide ample evidence to then allow adjudicators to take swift action. Additionally, when provided compelling evidence, adjudicator's swift action to protect clients should be concurrent with, not at the conclusion of, CRCF administrative due process appeals. This risk based audit approach follows the basic management tenant that the certainty of consequences prevents offenses.

Adjusting the audit process to establish certainty of consequences, along with subject matter experts giving a CRCF every opportunity to succeed, will have the positive management effect on these "high risk" CRCFs of solving their problems in advance of inspections. Whatever audit resources required to support and follow-up on the "high risk" pool will be more than offset by avoiding all the inefficient and ineffective motion operating the current enforcement process. This provides assurance, in the least intrusive manner, DHEC is meeting its #1 CRCF strategic objective – keeping clients safe and secure in satisfactory living conditions, as well as returning these "high risk" CRCFs to satisfactory living conditions as quick as possible.

No one wants to regulate a CRCF out of business. On the contrary, regulatory inspections actually promote CRCF improvement. However, intense regulation of a CRCF that cannot solve unsatisfactory living conditions for clients should receive no sympathy and the State needs to demonstrate resolve through persistent follow-up to solve the situation.

From a long-term perspective, it is time to recognize smaller CRCFs have the lowest revenues, highest overhead, clients most in need of services, and the clients most vulnerable. All this adds up to these smaller CRCFs having the highest risk of not only meeting requirements but also going out of business due to pure economics. Data developed from DHEC's addressing this "high risk" CRCF pool should be used to help OSS, SCDHHS, determine if its monthly support should be raised, at least for the small CRCFs, because beds lost in these facilities found in low income communities may not be replaceable. The most credible subject matter expert commented, 'if it (CRCF) is not a labor of love, it will enter the realm of poor care due to the economics.'

VII. Findings & Recommendations

Finding #1: The CRCF Program's audit and enforcement process inadequately addressed CRCFs with systemic, reoccurring violations causing a risk of imminent danger to clients resulting in unsatisfactory living conditions.

Recommendation #1a: The CRCF Program, DHEC, should consider maturing its audit program to a risk based approach to increase focus on "high risk" CRCFs to better support improvement to satisfactory standards and increase the quality of audit evidence to enable enforcement adjudicators to take swift action for CRCFs unwilling or incapable of meeting standards.

Recommendation #1b: DHEC adjudicators should consider enforcement actions to protect vulnerable clients living in unsatisfactory conditions concurrently with, not at the conclusion of, CRCF administrative due process appeals.

Finding #2: The CRCF Program oversight suffered from a lack of fixed accountability for results, as well as ineffective coordination among all stakeholders to bring their capabilities to bear to address recalcitrant CRCFs.

Recommendation #2a: The CRCF Program, DHEC, should consider taking full ownership of ensuring CRCFs provide satisfactory living conditions for clients, and build a capacity to address CRCFs systemically operating with unsatisfactory living conditions.

Recommendation #2b: The CRCF Program, DHEC, should develop a common operating strategy with all agency stakeholders to efficiently coordinate their respective needs, streamline their collective oversight, and be judicious in all agencies' collective "footprint" at CRCFs that consumes valuable CRCF staff resources to meet the varied needs of many oversight agencies.

Recommendation #2c: The CRCF Program, DHEC, should consider how to integrate other agency stakeholders' independent inspections into the proposed risk based approach for the mutual benefit of each agency and the overall protection of the most vulnerable CRCF clients.

Finding #3: Small CRCFs operated on thin profit margins when meeting state standards, which may impact their long-term economic viability, yet these needed Medicaid beds were likely not replaceable in low income and rural communities.

Recommendation #3a: The CRCF Program, DHEC, should consider rigorously capturing data from its root cause analyses in its intervention with "high risk" CRCFs to better understand the actual costs to operate a small CRCF dependent on Medicaid supplemental funding to assist OSS, SCDHHS, in its Medical supplemental rate setting, particularly for small CRCFs.

Recommendation #3b: The CRCF Program, DHEC, and OSS, SCDHHS, should consider coordinating communication methods to increase awareness among CRCFs to examine their Medicaid supplemental patients' physical conditions and, if appropriate, apply for Optional Supplemental Care of Assisted Living Participants (OSCAP).

Finding #4: The many agencies involved with CRCF oversight, funding, and client placements inefficiently transmitted their records of oversight, incidents, and actions among themselves, which undermined the State's overall ability to effectively regulate CRCFs.

Recommendation #4: The CRCF Program, DHEC, should consider placing its inspection data and relevant data from stakeholders on its Internet webpage, which would also benefit consumers with the transparency serving as a healthy quality motivator to the CRCF population.

Finding #5: Separating the licensing of CRCF Administrators from regulating CRCF facilities diluted the authority, responsibility, and accountability for the State to effectively regulate CRCFs, which currently has unaddressed "high risk" CRCFs with unsatisfactory living conditions impacting a vulnerable elderly and disabled population.

Recommendation #5a: The SC Long Term Health Care Administrators Board, LLR, should consider mitigating the fragmented oversight of the CRCF administrators and facilities by re-examining its disciplinary procedures that primarily rely on DHEC CRCF inspection reports inasmuch as the current process appears to add questionable value due to its redundancy to DHEC's disciplinary process.

Recommendation #5b: The SC Long Term Health Care Administrators Board, LLR, should consider mitigating the fragmented oversight of the CRCF administrators and facilities by examining all DHEC inspection reports associated with a CRCF administrator when renewing an Administrator's license given the professional implications of renewing Administrators demonstrating a repeat pattern of substantial non-compliance with DHEC CRCF inspection criteria.

Recommendation #5c: The SC Long Term Health Care Administrators Board, LLR, should consider reviewing the current active license for the former Administrator for Robin's CRCF, due to the alleged conduct requiring DHEC to revoke Robin's CRCF license, effective 1/11/2016.

ADMINISTRATIVE NOTE:

DHEC's comments on report located at link: http://oig.sc.gov/Documents/DHEC_CRCF_Program_Response.pdf.

List of Appendices

- A. News Articles re Peachtree Manor CRCF
- B. Bill of Rights for Residents of Long Term Care Facilities
- C. DHEC Inspection Checklists
- D. DHEC Enforcement Process
- E. Chronology of 5 CRCFs' Inspection and Enforcement Actions

APPENDIX A

WIS News 10 Investigation of Peachtree Manor Uncovers Disturbing Trend

Posted June 20, 2007

WINNSBORO, SC (WIS) - WIS News 10 has revisited an assisted living center, nearly eight months after a patient was killed in its care. We uncovered documents that show residents swallowing razor blades, employers sleeping on the job - and that's not all.

Outside Peachtree Manor - patients sit around on a warm day. But not nearly as serene earlier Monday - a resident at the assisted living home breaking a window, telling authorities she'd tried to leave because she wasn't being treated humanely by staff.

"I've seen horrible conditions," says one woman who agreed to talk to us on the condition of anonymity. She's a trained health professional, who's been inside Peachtree, "It's cooler staying outside than inside. Um, they're not getting their medicines. They're not being fed properly. And when you walk in the door you smell urine and feces."

That said, she isn't surprised patients are trying to escape. "I wouldn't even take my dog there."

A WIS News 10 investigation uncovered more than 30 separate reports documenting patient complaints. Some walked away. Others, unsupervised, tried to kill themselves. Our source says, "I can understand that. When you walk in, they're begging you to take them home. They don't want to stay there."

Dan contacted Peachtree's owner, David Donnelly Junior. He dodged us last year when a patient was hit by a truck - and killed - right outside the home.

Monday, Donnelly talked to WIS on the phone. In response to allegations of neglect, Donnelly says, "I'm not addressing anything."

WIS' Dan Tordjman then asked him to explain why his license was suspended by DHEC. He says the case against him is grounded in lies. He says, "Everyone is lying except me."

"It is a frightening situation," says Fairfield County Sheriff Herman Young - after Dan told him Peachtree's license was suspended. When Young took a look at the documents we found, the sheriff tells WIS News 10 he's contacting DHEC. "My concern about Peachtree Manor is the number of incident reports and the calls that we've had to make out there. Something is wrong."

Dan first began investigating Peachtree Manor last year. The facility has only been open since early last year. Between that time and the fatal accident involving that patient, we found that Peachtree had been fined more than \$20,000 by DHEC for various violations, from untrained staff to issuing bad checks to employees.

WIS News 10 found that Peachtree appealed and never paid for any of it. But since then there are more accusations, a former employee saying what incident reports document - accusations of patient on patient rape, staff members asleep on the job, resident with access to razor-blades - swallowing the blades, in attempts to kill themselves. Many of the reports simply involve patients walking away from the facility.

A DHEC spokesperson says the facility's license is indeed revoked, but that ruling is under appeal. So Peachtree it allowed to operate until a court hears the case.

That hearing is scheduled for next week.

Reported by [Dan Tordjman](#)

Posted by [Chantelle Janelle](#)

WIS News 10 Investigation of Peachtree Manor Continues

Posted June 25, 2007

WINNSBORO, SC (WIS) - Peachtree Manor in Winnsboro is a place with so many violations, the Department of Health and Environmental Control yanked it's permit to run eight months ago.

Since then, the sheriff's department has responded to the facility dozens of times. There have been reports of residents swallowing razor blades, and staff asleep leaving residents unsupervised.

So what's really going on at Peachtree Manor Residential Living Facility in Winnsboro, and why is the place still in business?

Mary, who lives at Peachtree Manor, says she's one of the caregivers.

"I'm 65 years old, and I feel that I treat them like I wanted to be treated. I think Mr. Donnelly's doing the best that he can," Mary told WIS News 10.

Before we could talk to anyone else, a woman kicked us off the property. She said the owner, David Donnelly Jr., told her to.

"He does not want you on his property," the woman told the reporter.

When we started to leave, however, some residents followed. They said they wanted to be heard, like Rhoda.

"I'm Type II diabetic, and they won't get me to the doctor," Rhoda said.

While Rhoda told us her story, the woman who told us to leave made a lady with a walker turn around so she couldn't speak to us.

And while Charlene told us she was afraid she was going to get in trouble, she told us, "I do believe there are things that need to be changed around here and I think I would be amiss if I didn't speak up for the rest of the folks here."

Then there was another woman who disagreed. "Everybody's taken good care of in there. And if there wasn't I'd be the first to say it," she said.

WIS News 10 started investigating Peachtree Manor back in October, after a patient was hit by a truck and killed right outside the home.

Since then, we've obtained dozens of reports filed with the Fairfield County Sheriff's Department.

Reports show two different residents swallowed razor blades, and both said they wanted to kill themselves.

The first was in January, the second in April. On March 7, when deputies responded to a resident calling because he couldn't find his room, they say they arrived to find all the doors locked, and Peachtree employees asleep in the TV room.

Then there are the DHEC reports. In May and June of last year, Peachtree Manor was cited for not running background checks on a number of its employees.

Staff members had not been trained in first aid, were not trained in medication management, and some had no restraint training.

The list goes on and on.

There were so many penalties, the Department of Health and Environmental Control slapped the facility with over \$20,000 in fines.

In October DHEC revoked Peachtree Manor's operating permit. So why is the place still open?

"It's the law. It's the right of a property owner," said DHEC spokesman Thom Berry.

He says state law allows facilities like Peachtree to operate with no permit until the appeals process is through.

It's a process that could go all the way to the Supreme Court, a process that could take years to resolve.

That leaves residents like Rhoda to fend for themselves.

Rhoda told WIS News 10 she has no family in the area to check up on her, and is basically on her own.

Since WIS News 10 began investigating this story, we've learned Peachtree isn't the only facility that Mr. Donnelly owns.

David Donnelly, Jr. also owns an assisted residential living facility called Myrtlecrest Residential Care Home, located in Eastover, which is outside of Sumter.

DHEC says so far this year that facility has only been cited once for a minor infraction.

Last year, however, Myrtlecrest had 11 citations. In 2005 it had six.

You can count on WIS News 10 to continue to follow this story.

Reported by [Kara Gormley](#)

Posted by [Logan Smith](#)

APPENDIX B

South Carolina Code of Laws
Unannotated
Current through the end of the 2014 Session

Title 44 - Health

CHAPTER 81

SECTION 44-81-10. Bill of Rights for Residents of Long-Term Care Facilities

HISTORY: 1985 Act No. 118, Section 1.

SECTION 44-81-20. Legislative findings.

The General Assembly finds that persons residing within long-term care facilities are isolated from the community and often lack the means to assert their rights fully as individual citizens. The General Assembly recognizes the need for these persons to live within the least restrictive environment possible in order to retain their individuality and personal freedom. The General Assembly further finds that it is necessary to preserve the dignity and personal integrity of residents of long-term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident's need for self-determination.

HISTORY: 1985 Act No. 118, Section 2.

SECTION 44-81-30. Definitions.

As used in this chapter:

- (1) "Long-term care facility" means an intermediate care facility, nursing care facility, or residential care facility subject to regulation and licensure by the State Department of Health and Environmental Control (department).
- (2) "Resident" means a person who is receiving treatment or care in a long-term care facility.
- (3) "Representative" means a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian.

HISTORY: 1985 Act No. 118, Section 3.

SECTION 44-81-40. Rights of residents; written and oral explanation required.

(A) Each resident or the resident's representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions of this chapter before or at the time of admission to a long-term care facility. Written acknowledgment of the receipt of the explanation by the resident or the resident's representative must be made a part of the resident's file. Each facility must have posted written notices of the residents' rights in conspicuous locations in the facility. The written notices must be approved by the department. The notices must be in a type and a format which is easily readable by residents and must describe residents' rights, grievance procedures, and the enforcement provisions provided by this chapter.

(B) Each resident and the resident's representative must be informed in writing, before or at the time of admission, of:

- (1) available services and of related charges, including all charges not covered under federal or state programs, by other third party payers, or by the facility's basic per diem rate;
- (2) the facility's refund policy which must be adopted by each facility and which must be based upon the actual number of days a resident was in the facility and any reasonable number of bed-hold days, except when the provisions of subsection (E) apply.

Each resident and the resident's representative must be informed in writing of any subsequent change in services, charges, or refund policy.

(C) Each resident or the resident's legal guardian has the right to:

- (1) choose a personal attending physician;
- (2) participate in planning care and treatment or changes in care and treatment;
- (3) be fully informed in advance about changes in care and treatment that may affect the resident's well-being;
- (4) receive from the resident's physician a complete and current description of the resident's diagnosis and prognosis in terms that the resident is able to understand;
- (5) refuse to participate in experimental research.

(D) A resident may be transferred or discharged only for medical reasons, for the welfare of the resident or for the welfare of other residents of the facility, or for nonpayment and must be given written notice of not less than thirty days, except that when the health, safety, or welfare of other residents of the facility would be endangered by the thirty-day notice requirement, the time for giving notice must be that which is practicable under the circumstances. Each resident must be given written notice before the resident's room or roommate in the facility is changed.

(E)(1) If a community residential care facility resident or a resident's representative chooses to voluntarily relocate from the resident's current facility, the resident or the resident's representative must give the facility administrator written notice of this intent to relocate not less than fourteen days before the resident's relocation becomes effective. Voluntary relocation does not occur when a resident of a community residential care facility seeks to be discharged because a higher level of care is required or because the resident's health, safety, or welfare is endangered.

(2) If a community residential care facility resident or a resident's representative fails to give timely notice as required by this subsection, the facility administrator may charge the resident the equivalent of fourteen days occupancy from the earlier of the date of the relocation or the date the facility administrator received proper notice of the resident's intent to relocate. However, if the facility is able to fill the bed vacated by the resident, the facility shall cease charging the resident regardless of the notice given. The facility shall notify the previous resident in writing as soon as it fills the bed with a new resident.

(3) Residents participating in the Optional State Supplementation Program are excluded from the requirements of items (1) and (2).

(F) Each resident or the resident's representative may manage the resident's personal finances unless the facility has been delegated in writing to carry out this responsibility, in which case the resident must be given a quarterly report of the resident's account.

(G) Each resident must be free from mental and physical abuse and free from chemical and physical restraints except those restraints ordered by a physician.

(H) Each resident must be assured security in storing personal possessions and confidential treatment of the resident's personal and medical records and may approve or refuse their release to any individual outside the facility, except in the case of a transfer to another health care institution or as required by law or a third party payment contract.

(I) Each resident must be treated with respect and dignity and assured privacy during treatment and when receiving personal care.

(J) Each resident must be assured that no resident will be required to perform services for the facility that are not for therapeutic purposes as identified in the plan of care for the resident.

(K) The legal guardian, family members, and other relatives of each resident must be allowed immediate access to that resident, subject to the resident's right to deny access or withdraw consent to access at any time. Each resident without unreasonable delay or restrictions must be allowed to associate and communicate privately with persons of the resident's choice and must be assured freedom and privacy in sending and receiving mail. The legal guardian, family members, and other relatives of each resident must be allowed to meet in the facility with the legal guardian, family members, and other relatives of other residents to discuss matters related to the facility, so long as the meeting does not disrupt resident care or safety.

(L) Each resident may meet with and participate in activities of social, religious, and community groups at the resident's discretion unless medically contraindicated by written medical order.

(M) Each resident must be able to keep and use personal clothing and possessions as space permits unless it infringes on another resident's rights.

(N) Each resident must be assured privacy for visits of a conjugal nature.

(O) Married residents must be permitted to share a room unless medically contraindicated by the attending physician in the medical record.

(P) A resident or a resident's legal representative may contract with a person not associated with or employed by the facility to perform sitter services unless the services are prohibited from being performed by a private contractor by state or federal law or by the written contract between the facility and the resident. The person, being a private contractor, is required to abide by and follow the policies and procedures of the facility as they pertain to sitters and volunteers. The person must be selected from an approved list or agency and approved by the facility. All residents or residents' legal representatives employing a private contractor must agree in writing to hold the facility harmless from any liability.

HISTORY: 1985 Act No. 118, Section 4; 1992 Act No. 474, Section 1; 1994 Act No. 438, Section 1; 2014 Act No. 170 (H.3098), Section 1, eff May 16, 2014.

SECTION 44-81-50. Discrimination.

Each resident must be offered treatment without discrimination as to sex, race, color, religion, national origin, or source of payment.

HISTORY: 1985 Act No. 118, Section 5.

SECTION 44-81-60. Grievance procedures; review by department.

Each facility shall establish grievance procedures to be exercised by or on behalf of the resident to enforce the rights provided by this act. The department shall review and approve these grievance procedures annually. This act is enforced by the department. The department may promulgate regulations to carry out the provisions of this act.

HISTORY: 1985 Act No. 118, Section 6.

SECTION 44-81-70. Retaliation.

No facility by or through its owner, administrator, or operator, or any person subject to the supervision, direction, or control of the owner, administrator, or operator shall retaliate against a resident after the resident or the resident's legal representative has engaged in exercising rights under this act by increasing charges, decreasing services, rights, or privileges, or by taking any action to coerce or compel the resident to leave the facility or by abusing or embarrassing or threatening any resident in any manner.

APPENDIX C



**Bureau of Health Facilities Licensing Inspection Checklist
Standards for Licensing
Community Residential Care Facilities (CRCF)**

Documentation to be Provided

Facility:

Date:

Inspection Items	R. 61-84	Notes
Copy of current DHEC Regulation 61-84.	103.B [II]	
License posted in a conspicuous place.	103.G.1. [II]	
Copy of the most recent inspection reports of investigation provided to public upon written request.	202.E. [III]	
Written Residential Care Policy & Procedures Manual regarding resident care, resident rights and the operation of the facility - documentation of periodic review. Available to all staff and for review at all times.	401[II]	
Evidence of facility administrator	502.A. [I]	
Individual designated in writing to act in the absence of the administrator.	502.C. [II]	
Personnel records to include at least: <ul style="list-style-type: none"> ▪ Criminal background check (501.A./I) ▪ accurate information e.g., address, phone number (501.E./II) ▪ assigned duties and responsibilities (501.F./II) ▪ inservice training (504.A./I) ▪ health assessment to include tuberculin skin testing (505.A./I) ▪ 	Various	
Contracts with qualified sources outside the facility.	501.G. [II]	
Incident/accident reports for the previous year. (facilities retain for 6 years after services cease	601.A. [III]	
Financial records for each resident (whose personal money is managed by the facility) to include: <ul style="list-style-type: none"> ▪ authorization to manage personal monies (902.E.); ▪ itemized personal money management file with receipts (902.G.); ▪ quarterly reports of account (902.H.). 	902. [II]	
Medication destruction records. Retain records for 2 years	1207.C. [I]	
Recreational: Available Supplies(903.D), Activities Schedule Posted (903.E), Activities Conducted, Designated Staff (903.C)	903.A [III]	
A health record for each resident to include at least:	Various	

<ul style="list-style-type: none"> admission medical examination(1101.A) attesting to the resident's special care requirements(1101.A.4) appropriate for CFR placement (1101.A.1/ I); Annual update of this report (1101.A. / I); initial 2-step baseline TB skin test or BAMT (1702.E.) admission assessment within 72 hours (702.A. / II); <ul style="list-style-type: none"> Consultations by physicians or other authorized healthcare providers (701.B.1. / II); reports of care /services provided (e.g., hospice, home health, etc.) (701.B.3. / II); individual care plan (703.A. / II); signed explanation of charges & services (901.A.1. /A.2); signed statement of resident rights and grievance procedures per Section 901.A.9. and Appendix A, SC Law 44-81-40(II) 		
At least one different structured recreational activity provided daily each week that shall accommodate residents' needs/interests/capabilities as indicated in the ICP's.	903.B [III]	
Current month activity schedule posted, including dates, times, and locations.	903.E. [III]	
Omnibus Adult Protection Act and Resident Bill of Rights and enforcement provision posted (also per Appendix A).	1001.B. [II]	
Applicable reference materials published within the previous three years with adequate information concerning medications.	1201.B. [I]	
Medication administration & treatment record for each resident.	1203.A. [I]	
Evidence of CLIA Waiver, if facility staff members monitor blood sugar levels	1203.B. [I]	
Quarterly pharmacy reports, if utilizing	1205.B. [I]	
Records of food and supplies purchased per R.61-25	1301.A. [II]	
At least one-week supply of staple foods, two-day supply of perishable foods and supplies for special diets.	1302.B. [II]	
Current week's menu posted.	1306.A [III]	
Menus, signed by physician or dietician, for medically prescribed special diets.	1305.A. [I]	
A current diet manual.	1305.C. [III]	
Past 30 days of menus on file.	1306.B.	
Plans for actions to be taken in the event of emergencies/disasters.	1401. [II]	
Emergency call data posted.	1402. [III]	
Written plan for continuity of essential services.	1403. [II]	
Evacuation Plan posted.	1503.B. [I]	

Veterinarian records for pets (initial and annual), if applicable.	1705.A. [II]	
Written and Implemented Quality Improvement Program	1801. [II]	
Written grievance procedures posted per Appendix A, SC Law 44-81-60.	1001.B [II]	
Annual Tuberculosis Risk Assessment	1702.B. [II]	
Notes:		



**Bureau of Health Facilities Licensing Inspection Checklist
Standards for Licensing
Community Residential Care Facilities (CRCF)**

Facility Walk-Through

Facility:

Date:

Inspection Items	R. 61-84	Notes
Copy of 61-84	103.B. [II]	
Bed capacity _____ Census _____	103.E. [I]	
License posted in a conspicuous place	103.G.1. [II]	
Appropriate staffing	503.B.1. [I]	
Record accommodations appropriate and secure	704.A. [III]	
Resident(s) is/are appropriate for CRCF admission/retention	801. [I]	
Adequate recreational supplies	903.D. [III]	
Monthly recreational schedule posted	903.E. [III]	
No restraints used unless in emergency/documented	905. [I]	
Bill of Rights/Omnibus Adult Protection Act posted	1001.B. [II]	
Meds properly stored	1206.A. [I]	
Residents not be locked in or out of their rooms or any common usage areas, or in or out of the facility building. Exit doors may be equipped with delayed egress locks as permitted by the building codes.	1001.G. [I]	
Menus shall be readily available and posted in one or more conspicuous places in a public area. All substitutions made on the master menu shall be recorded in writing.	1306.A [III]	
Emergency numbers posted	1402. [III]	
Evacuation plan posted	1503.B. [I]	
Proper installation, location, & maintenance of fire extinguishers	1502. [I]	
Maintenance	1601.A. [II]	
Interior housekeeping to include safe storage of harmful agents	1703.A [II]	

Exterior housekeeping	1703.B. [II]	
Proper disposal of infectious waste	1704. [I]	
Proper pet handling	1705. [II]	
Proper handling of clean/soiled linens	1706. [II]	
In bathrooms and resident rooms, window treatments shall be arranged in a manner to provide privacy.	2103. [II]	
Proper storage & handling of flammable gases (including no smoking signs)	2104.A. [I]	
Facility free of fire hazards or impediments to fire prevention	2105.A. [I]	
No portable heaters	2105.B. [I]	
Screens/Partitions in front of fireplaces/stoves	2105.C. [I]	
Halls free of obstructions	2201.A. [III]	
Resident room shall open directly to an approved exit access corridor without passage through another occupied space or shall have an approved exit directly to the outside at grade level and accessible to a public space free of encumbrances.	2201.B. [I]	
Water temp 100-120° in resident accessible bath/restrooms	2301.B. [I]	
Laundry water temp $\geq 160^{\circ}$ or $\geq 110^{\circ}$ if bleach and hot air dry used	2301.E. [I]	
Proper exit signs	2403.A. [I]	
Proper emergency electric services	2404. [I]	
Facility temperature 72-78° in resident areas	2501.B. [II]	
Air filters clean	2501.E. [II]	
Bath/restroom windows operable or mechanical ventilation	2501.G. [II]	
Resident room furnishings (3 draw bureau, night stand, chair, closet)	2602.A.2. [III]	
Comfortable chair for each resident occupying the room	2602.A.3. [III]	
No beds in locations other than resident rooms	2602.C. [I]	
For new facilities, no more than 3 beds per resident room (see Section 103.C for existing)	2602.D. [II]	
Portable commodes used only at night or temporary illness and suitably stored at all other times	2602.G. [II]	
Side rails utilized when ordered by a physician or other authorized healthcare provider	2602.H. [III]	
Privacy arrangements for semi-private room	2602.I. [III]	

One full-length mirror in each resident room	2602.J. [III]	
Three (3) feet between beds	2603.C [II]	
Liquid soap in public restroom and bathrooms used by more than one resident and individual sanitary method of drying hands available at each lavatory	2604.C. [II]	
All tubs, showers, and toilets equipped with grab bars	2604.E. [II]	
Mirror above each lavatory in bathroom	2604.J. [II]	
Adequate supply of toilet paper in each bathroom	2604.K. [II]	
Waste receptacle in restroom (women's covered)	2604.L. [II]	
Bar soap and linens furnished to each resident	2604.M. [II]	
Appropriate ramps installed	2606. [II]	
Screens for windows/doors intended for ventilation	2608. [II]	
Adequate storage areas provided	2611.A. [III]	
Storage buildings secured and accessible	2611.B. [III]	
In mechanical rooms used for storage, items located away from mechanical equipment and not type to create fire hazard	2611.C. [I]	
Supplies/Equipment not stored directly on floor; supplies and equipment susceptible to water damage not stored under sinks	2611.D. [III]	
Telephone service accessible to residents and staff	2612.A.. [III]	
Unsafe outdoor areas protected from residents	2614.A. [I]	
Sufficient number of outside tables and chairs for residents	2614.D. [III]	
Notes:		



**Bureau of Health Facilities Licensing Inspection Checklist
Standards for Licensing
Community Residential Care Facilities (CRCF)**

Client Records

Facility:

Date:

Inspection Items	R. 61-84	Patient ID	Patient ID	Patient ID	Patient ID	Patient ID	Patient ID
Orders for: diets, medications, care, service.	701.B.2. [II]						
No care service notes for Hospice/ Home Health/ etc.	701.B.3. [II]						
Special procedures/preventative measures	701.B.5. [II]						
Notes of observation/signed/dated and documented at least monthly.	701.B.6. [II]						
Emergency medical care, physician, payment plan and plan for securing medications	701.B.8. [II]						
Special care info. (DNR, allergies , treatments, devices)	703.B.9. [II]						
Emergency medical care, physician, payment plan and plan for securing medications	701.B.8. [II]						
Special care info. (DNR, allergies , treatments, devices)	701.B.9. [II]						
Photo of resident (dated, updated PRN not less 24mo.	701.B.10. [I]						
Written Assessment within 72 hrs. of admission to facility	702. [II]						
ICP- Signed, within 7 days and	703.A [II]						

updated every 6 mos. or as necessary							
ICP 1. The needs of the resident, 2. Requirements and arrangements for visits by or to physicians 3. Advance directives/healthcare power of attorney, as applicable; 4. Recreational and social activities 5. Nutritional needs.	703.B.2. [II]						
ICP-Advanced directives/medical POA/ DNR	703.B.3. [II]						
Written, detailed service agreement to include fees, date allowance received, transportation; grievance procedures, discharge provisions	901.A. [III]						
Resident care/ services/ meds not administered per orders.	901.B. [I]						
Resident written approval for the facility to manage funds	902.E. [II]						
Accurate accounting of resident funds	902.G. [II]						
Quarterly financial balance provided to resident (even 0).	902.H. [II]						
PE within 30 days prior to DOA; Annually thereafter	1101.A. [I]						
Admission 2-step PPD	1101.B. [I]						
PPD results documented in mm of induration	1702.A [I]						
Admission /Baseline two-step TST /single BAMT	1702.E.1.a.1 [I]						
Requirements for baseline/ newly positive test	1702.E.1.b. 1. [I]						
Emergency admission declared in writing	1702.F. [I]						
Notes:							



**Bureau of Health Facilities Licensing Inspection Checklist
Standards for Licensing
Community Residential Care Facilities (CRCF)**

Staff Records

Facility:

Date:

Inspection Items	R. 61-84	Staff ID	Staff ID	Staff ID	Staff ID	Staff ID	Staff ID
Direct Care Staff							
No Prior Conviction	501.A. [I]						
Current information maintained	501.E. [II]						
Job Description	501.F. [II]						
Orientation	504.B. [I]						
Pre-employment health assessment	505.A. [I]						
Pre-employment TB Testing	1702.D.1 [I]						
Inservice training at least annually unless otherwise specified by certificate: 1. Basic first-aid; 2. Procedures for checking and recording vital signs ; 3. Management/care of persons with contagious and/or communicable disease; 4. Medication management ; 5. Depending on the type of residents, care of persons specific to the physical/mental condition ; 6. Use of restraint techniques; 7. OSHA blood-borne pathogens; 8. Cardiopulmonary resuscitation;	504.A. [II]						

9. Confidentiality of resident information and records;							
10. Bill of Rights for Long-Term Care Facilities;							
11. Fire response training within twenty-four (24) hours of their first day on the job in the;							
12. Emergency procedures/disaster preparedness within twenty-four (24) hours of their first day							
13. Activity training (for the designated staff only).							
Private Sitters							
Formalized private sitter program.	506.A. [II]						
Written policies and procedures for private sitters	506.A.2. [II]						
Inservice for Private Sitters: a. Residents' rights; b. Confidentiality; c. Disaster preparedness; d. Emergency response procedures; e. Safety procedures and precautions; f. Infection control.	506.A.3 [II]						
Orientation	506.A.3. [II]						
Pre-employment Health assessment	506.B.1. [II]						
Pre-employment TB Testing	506.B.3. [II]						
Notes:							

APPENDIX D

BHFL-14 Consent Order Enforcement Action Standard Operating Procedure (CCO and HFO)

Purpose

To define the process to be followed when an inspection, investigation, or failure to comply with regulatory requirements results in a Consent Order being generated with a facility licensed or permitted by BHFL.

Key Staff Involved

Field Manager, Division Director, Assurance Coordinator, Policy & Development staff, Bureau Chief, Deputy Director, Legal

Process Steps

1. When violations are identified that could require an Enforcement Action against a facility, the Field Manager completes the Enforcement Action Request Form (SEE FIGURE 1.0) and submits it to the Division Director.
2. Division Director reviews the request and, if an enforcement action is recommended, forwards the form to the Assurance Coordinator.
3. Assurance Coordinator creates a packet including the Summary of Violations Form (SEE FIGURE 2.0), which shows the past 36 months of compliance history for the facility, and Proposed Enforcement Action Memorandum (SEE FIGURE 3.0).
4. The packet is reviewed and signed off on by the Field Manager, Division Director, Bureau Chief, and the Deputy Director.
5. Assurance Coordinator creates a letter informing the facility that it has been determined to be in violation of certain standards and BHFL is considering an enforcement action against the facility. The letter includes a synopsis of the violations. It also invites the facility to attend an Enforcement Conference to discuss the violations. The letter is sent by Certified Mail.
6. The Enforcement Conference is typically held within 3-4 weeks, or earlier if necessary, and is attended by the Division Director, Bureau Chief, Policy and Development staff and DHEC Legal.
7. The cited violations are reviewed with the facility, with the intent of agreeing to a Consent Order. The Consent Order spells out the actions the facility will take to bring itself into compliance.
8. If the parties are unable to reach agreement on a Consent Order, BHFL may seek an Administrative Order against the facility (SEE BHFL-15).
9. If the parties agree to a Consent Order, the Bureau Chief and the facility sign an Enforcement Conference Summary & Agreement Sheet, which stipulates the pertinent terms agreed upon (SEE FIGURE 4.0).
10. Assurance Coordinator drafts a proposed Consent Order and submits to Legal for review.
11. Assurance Coordinator sends the proposed Consent Order to the facility by Certified Mail.
12. The Consent Order must be signed by both the licensee and the administrator of the facility (if they are 2 different individuals) and returned to BHFL within 15 days. Failure to timely return the Consent Order may result in BHFL seeking an Administrative Order against the facility (SEE BHFL-15).
13. Once the signed Consent Order is returned, it is signed by Legal, the Bureau Chief and the Director of Public Health.
14. Assurance Coordinator sends a copy of the executed Consent Order to the facility by Certified Mail.
15. Assurance Coordinator makes an electronic copy on the T:\ drive and a paper copy for the Enforcement file.

FIGURE 1.0

**ENFORCEMENT ACTION REQUEST FORM
PART A – FACILITY INFORMATION AND PROPOSED ACTION**

DATE OF THIS REQUEST:

FACILITY NAME:

LICENSE NUMBER:

LICENSEE OR OWNER:

ADMINISTRATOR:

NAME OF PERSON COMPLETING THIS REQUEST:

Type of enforcement action being requested: ☐ Consent Order Agreement ☐ Administrative Order
☐ Suspend License ☐ Revoke License ☐ Suspend Food Service Operation
☐ Deny Renewal of License ☐ Deny Initial License
☐ Impose Monetary Penalty in the Amount of \$
☐ Other (specify):

What is the basis for this enforcement action?

☐ Inspection History ☐ Specific Inspection Dated: ☐ Specific Investigation Dated:

☐ Imminent Danger (specify):

Complete PART B below for each Audit and attach to PART A

**ENFORCEMENT ACTION REQUEST FORM
PART B – AUDIT INFORMATION**

If enforcement action is based on or includes a report of visit (ROV), complete a separate section below for each that is being used as the basis of your recommendation. If the packet that has been returned to you is incomplete, locate and attach any correspondence, POCs, complaint packet and other documentation). Place it in the packet in the proper location and order.

Date of ROV:

Type of Visit:

Is the above date the date of the actual inspection/investigative visit? ☐ Yes ☐ No

If not, what is the actual date the visit was conducted:

Was a copy of the ROV left at the conclusion of the visit? ☐ Yes ☐ No

If so, with whom?

If not, was it provided at a later time? ☐ Yes ☐ No

1 what date?

How? ☐ Mail ☐ e-mail ☐ Hand Delivered ☐ At Our Office

Was a Plan of Correction (POC) submitted for the ROV? ☐ Yes ☐ No If yes, on what date?

Was the response(s) to the ROV adequate? ☐ Yes ☐ No

If no, elaborate:

Were there any other meetings (i.e. consultations), request for further documentation, documentation copied during the inspection/investigation, or other request/submissions by the facility/licensee related to this ROV? ☐ Yes ☐ No

If yes, elaborate:

FIGURE 2.0

South Carolina Department of Health and Environmental Control
BUREAU OF HEALTH FACILITIES LICENSING
 Summary of Violations (Basis for Imposing Penalties)

(Facility)				(Facility Type)	(License Unit	
Date Cited	R.61-Section	Class	Description of Violations	Occurrence Date Reference	Penalty Range	Penalty Imposed
				TOTAL =	Penalty Range Totals	Total Penalty

FIGURE 3.0

PROPOSED ENFORCEMENT ACTION MEMORANDUM

Deputy Director, Health Regulation
Approved: _____ Disapproved: _____

Date _____

Comments _____

Chief, Health Facilities Licensing Bureau
Recommend Approval: _____ Disapproval: _____

Date _____

Comments _____

Division Director
Recommend Approval: _____ Disapproval: _____

Date _____

Comments _____

Field Manager
Recommend Approval: _____ Disapproval: _____

Date _____

Comments _____

Program Manager, Policy & Development Support
Recommend Approval: _____ Disapproval: _____

Date _____

Comments _____

Date forwarded by Assurance Coordinator: _____

Recommended Action:

- ☐ Suspend the license of
☐ Deny renewal license of

- ☐ Revoke the license of
☐ Deny initial license of

- ☐ Suspend the Food Service of
☐ Other (explain below)

Impose monetary penalty in the amount of \$ _____ on _____

Activity: _____ County: _____

Licensee: _____

Administrator: _____

for the following reasons (use reverse side if necessary):

Date of last inspection: _____ Type: _____

Total number of violations: _____ Class I _____ Class II _____ Class III _____

Number of repeat violations: _____

FIGURE 14



Promoting and protecting the health of the public and the environment

FIGURE 4.0

The facility representative(s) and Department representative met today and agreed that the consent order shall contain the following:

-
-
-
-
-
-

Name of Facility

X _____
Facility Representative

Date

X _____
DHFC Representative

Date

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2100 Bull Street • Columbia, SC 29201 • Phone: (803) 895-3432 • www.scdhec.gov

Date of Last Review

October 7, 2014

BHFL-15 Administrative Order Enforcement Action Standard Operating Procedure (CCO and HFO)

Purpose

To define the process to be followed when an inspection, investigation, or failure to comply with regulatory requirements results in an Administrative Order being enforced against an activity licensed or certified by BHFL.

Key Staff Involved

Field Manager, Division Director, Assurance Coordinator, Bureau Chief, Deputy Director, Legal

Process Steps

1. An Administrative Order may be sought when an inspection or investigation uncovers serious violations, the facility has a history of non-compliance with Department regulations, or there is an imminent danger situation. In many cases, BHFL seeks a Consent Order agreement (SEE BHFL-14) with a facility before pursuing an Administrative Order. Failure of the facility to agree to a Consent Order may escalate to BHFL seeking an Administrative Order.
2. When violations are identified that could require an Administrative Order against a licensed/permitted facility or provider, the Field Manager completes the Enforcement Action Request Form (SEE FIGURE 1.0) and submits it to the Division Director.
3. Division Director reviews the request and if an enforcement action is recommended forwards the form to the Assurance Coordinator.
4. Assurance Coordinator creates a packet including the Summary of Violations Form (SEE FIGURE 2.0), which shows the past 36 months of compliance history for the facility, and Proposed Enforcement Action Memorandum (SEE FIGURE 3.0).
5. The packet is reviewed and signed off on by the Field Manager, Division Director, Bureau Chief, and the Deputy Director.
6. Alternatively, an activity may have failed to agree to a Consent Order, leading to BHFL seeking an Administrative Order to address the identified violations (SEE BHFL-14).
7. Assurance Coordinator submits proposed Administrative Order to Legal for review.
8. Once the Administrative Order is executed, Assurance Coordinator makes an electronic copy for the Enforcement file on the T:\ drive and a paper copy for the facility's Enforcement File.
9. Assurance Coordinator creates a letter informing the activity that it has been determined to be in violation of certain standards and BHFL is seeking an enforcement action against the facility.
10. The letter is signed by the Bureau Chief and Deputy Director.
11. Assurance Coordinator creates a packet that includes the letter, a Synopsis of Violations, and a copy of the DHEC Board's Request for Review (RFR) Process (SEE FIGURE 4.0) and sends it to the activity by Certified Mail.
12. Activity has 15 days from the date of mailing to file a RFR Request with the DHEC Board. If a RFR is not filed, the Administrative Order becomes the final Agency decision.
13. DHEC Board notifies activity whether or not they will conduct an RFR hearing on the appeal. If an RFR hearing is held, the DHEC Board may dismiss, accept or modify the staff findings.
14. If the DHEC Board elects to not conduct an RFR hearing, the activity has 30 days from the date of the Board notification to file an appeal with the Administrative Law Court or the Administrative Order becomes final.
15. If the DHEC Board conducts an RFR hearing, the Clerk of the Board will mail the decision to the activity within 30 days following the hearing.
16. The activity then has 30 days from the date of the Board notification to file an Administrative Law Court appeal. Otherwise, the Administrative Order becomes final.
17. Failure to comply with the terms of the Administrative Order may lead to BHFL seeking subsequent Administrative Orders to enforce compliance.

FIGURE 1.0

**ENFORCEMENT ACTION REQUEST FORM
PART A – FACILITY INFORMATION AND PROPOSED ACTION**

DATE OF THIS REQUEST:

FACILITY NAME:

LICENSE NUMBER:

LICENSEE OR OWNER:

ADMINISTRATOR:

NAME OF PERSON COMPLETING THIS REQUEST:

Type of enforcement action being requested: ☐ Consent Order Agreement ☐ Administrative Order
☐ Suspend License ☐ Revoke License ☐ Suspend Food Service Operation
☐ Deny Renewal of License ☐ Deny Initial License
☐ Impose Monetary Penalty in the Amount of \$
☐ Other (specify):

What is the basis for this enforcement action?

☐ Inspection History ☐ Specific Inspection Dated: ☐ Specific Investigation Dated:

☐ Imminent Danger (specify):

Complete PART B below for each Audit and attach to PART A

**ENFORCEMENT ACTION REQUEST FORM
PART B – AUDIT INFORMATION**

If enforcement action is based on or includes a report of visit (ROV), complete a separate section below for each that is being used as the basis of your recommendation. If the packet that has been returned to you is incomplete, locate and attach any correspondence, POCs, complaint packet and other documentation). Place it in the packet in the proper location and order.

Date of ROV:

Type of Visit:

Is the above date the date of the actual inspection/investigative visit? ☐ Yes ☐ No

not, what is the actual date the visit was conducted:

Was a copy of the ROV left at the conclusion of the visit? ☐ Yes ☐ No

If so, with whom?

If not, was it provided at a later time? ☐ Yes ☐ No

On what date?

How? ☐ Mail ☐ e-mail ☐ Hand Delivered ☐ At Our Office

Was a Plan of Correction (POC) submitted for the ROV? ☐ Yes ☐ No If yes, on what date?

Was the response(s) to the ROV adequate? ☐ Yes ☐ No

If no, elaborate:

Were there any other meetings (i.e. consultations), request for further documentation, documentation copied during the inspection/investigation, or other request/submissions by the facility/licensee related to this ROV? ☐ Yes ☐ No

If yes, elaborate:

South Carolina Department of Health and Environmental Control
BUREAU OF HEALTH FACILITIES LICENSING
Summary of Violations (Basis for Imposing Penalties)

(Facility)						(Facility Type)	(License Units
Date Cited	R.61- Section	Class	Description of Violations	Occurrence Date Reference	Penalty Range	Penalty Imposed	
				TOTAL =	Penalty Range Totals	Total Penalty	

FIGURE 3.0

PROPOSED ENFORCEMENT ACTION MEMORANDUM

Deputy Director, Health Regulation
Approved: _____ Disapproved: _____

Date _____

Comments

Chief, Health Facilities Licensing Bureau
Recommend Approval: _____ Disapproval: _____

Date _____

Comments

Division Director
Recommend Approval: Disapproval:

Date _____

Comments

Field Manager
Recommend Approval: _____ Disapproval: _____ Date _____ Comments _____

Program Manager, Policy & Development Support
Recommend Approval: _____ Disapproval: _____ Date _____ Comments _____

Date forwarded by Assurance Coordinator: _____

Recommended Action:

- ☐ Suspend the license of ☐ Revoke the license of ☐ Suspend the Food Service of
☐ Deny renewal license of ☐ Deny initial license of ☐ Other (explain below)

Impose monetary penalty in the amount of \$ _____ on _____

Activity: _____ County: _____

Licensee: _____

Administrator: _____

for the following reasons (use reverse side if necessary):

Date of last inspection: _____ Type: _____

Total number of violations: _____ Class I _____ Class II _____ Class III _____

Number of repeat violations: _____

Figure 4.0

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

Contested Cases, Appeals Effective May 8, 2014

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).

4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
 5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or

(2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
 6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
 7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
 8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.
- NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.
9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
 10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee.

stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] NOTE: The burden of proof is on the Requestor(s)

- Rebuttal by Department staff [15 minutes]
- Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.

2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council.. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

Rev 2, 5/8/2014

Date of Last Review

October 7, 2014

APPENDIX E

CRCF #1 (4 - 9 beds)

DHEC Inspections/Investigations/Enforcement Actions & LLR Enforcement Actions Initiated

- 5/20/2011 Inspection – 21 Total violations; 9 Class I & 12 Class II violations
- 1/4/2012 Inspection – 31 Total violations; 10 Class I & 21 Class II violations; 25 Repeat violations
- 1/6/2012 Inspection – 2 Total violations; 2 Class II violations; 2 Repeat violations
- 6/1/2012 Inspection – 61 Total violations; 20 Class I violations; 41 Class II violations; 61 Repeat violations
- 2/5/2013 DHEC Executed a Consent Order based on the 4 previous inspections requiring a \$21,500 monetary penalty/\$4,800 payable in 12 months/1 Yr period of substantial compliance of Regulations 61- 84/\$16,700 kept in abeyance
- 6/7/2013 Inspection - 28 Total violations; 10 Class I violations; 18 Class II violations; 17 Repeat violations
- 10/22/2013 Inspection & Follow-up Investigation – 15 Total violations; 2 Class I violations; 13 Class II violations; 11 Repeat violations
- 12/20/2013 Inspection – 22 Total violations; 11 Class I violations; 11 Class II violations; 10 Repeat violations
- 1/16/2014 Inspection – 11 Total violations; 5 Class I violations; 6 Class II violations; 3 Repeat violations
- 6/20/2014 Inspection & Complaint Investigations– 28 Total violations; 16 Class I violations; 12 Class II violations; 13 Repeat violations
- 6/24/2014 Inspection – 16 Total violations; 10 Class I violations; 6 Class II violations
- 7/7/2014 DHEC executed letter to acknowledge receipt of final payment of \$4,800 penalty/ considered the facility to be in substantial compliance of the regulations and the matter closed.
- 2/17/2015 LLR Executed Consent Order based on DHEC 2/5/13 Consent Order – License suspended/stayed; 2 Yrs Probation & \$2,000 fine paid within 90 days
- 6/26/2015 Inspection – 17 Total violations; 14 Class I violations; 3 Class II violations
- 6/26/2015 Inspection – 5 Total violations; 5 Class II violations
- 10/2/2015 Inspection – 33 Total violations; 29 Class I violations; 4 Class II violations; 19 Repeat violations.

Total Violations	Class I	Class II	Repeat Violations
290	136	154	161

CRCF #2 (10-50 beds)

DHEC Inspections/Investigations/Enforcement Actions & LLR Enforcement Actions Initiated

- 11/11/2010 Inspection – 5 Total violations; 5 Class I violations; 3 Repeat violations
- 4/27/2011 Inspection – 15 Total violations; 5 Class I violations; 10 Class II violations; 6 Repeat violations
- 8/24/2011 Inspection – 38 Total violations; 22 Class I violations; 16 Class II violations; 16 Repeat violations
- 11/10/2011 Inspection – 18 Total violations; 18 Class I violations
- 8/7/2012 DHEC executed a Consent Order requiring \$12,000 monetary penalty/\$3,600 payment in 1 year & 1 year period of substantial compliance of the regulations/\$8,400 kept in abeyance
- 2/14/2013 Inspection – 15 Total violations; 9 Class I violations; 6 Class II violations; 3 Repeat violations
- 6/6/2013 LLR executed a Consent Order for Public reprimand and a \$500 fine.
- 7/18/2013 Inspection – 9 Total violations; 8 Class I violations; 1 Class II violations; 7 Repeat violations
- 8/13/2013 DHEC executed a Call-in Penalty of \$500 for non-compliance with the initial Consent Order of the \$8,400 held in abeyance.
- 10/24/2013 Inspection – 11 Total violations; 8 Class I violations; 3 Class II violations; 3 Repeat violations
- 12/12/2013 DHEC executed letter to acknowledge receipt of final payment of \$3,600 penalty/\$500 Call-in Penalty/considered facility to be in substantial compliance of the regulations and the matter closed.
- 1/17/2014 Inspection – 24 Total violations; 2 Class I violations; 22 Class II violations; 17 Repeat violations
- 8/15/2014 Inspection – 10 Total violations; 4 Class I violations; 6 Class II violations; 6 Repeat violations
- 2/6/2015 Inspection – 5 Total violations; 5 Class II violations
- 7/9/2015 Inspection & Complaint Investigation – 17 Total violations; 13 Class I violations; 4 Class II violations; 1 Repeat violation
- 10/23/2015 Complaint Investigation – 0 violations

Total Violations	Class I	Class II	Repeat Violations
167	94	73	62

CRCF # 3 (10-50 beds)

DHEC Inspections/Investigations/Enforcement Actions & LLR Enforcement Actions Initiated

- 5/24/2012 Inspection & Complaint Investigation – 24 Total violations; 15 Class I violations; 9 Class II violations; 20 Repeat violations
- 11/8/2012 Inspection – 15 Total violations; 8 Class I violations; 7 Class II violations; 12 Repeat violations
- 5/15/2013 Inspection – 17 Total violations; 6 Class I violations; 11 Class II violations; 15 Repeat violations
- 12/13/2013 Complaint Investigation – 2 Total violations; 2 Class I violations; 2 Repeat violations
- 7/2/2014 LLR executed an Order to Cease and Desist - License expired 6/30/14 (\$50 Late Fee Penalty)
- 7/23/2014 DHEC executed a Consent Order based on the previous 4 DHEC inspections (\$5,500 monetary penalty/\$500 payment within 30 days/remainder kept in abeyance)
- 8/5/2014 LLR executed an Order to Cease and Desist - Second Notice - License expired 6/30/14 (\$50 Late Fee Penalty)
- 9/2/2014 LLR executed an Order to Cease and Desist - Final Notice - License expired 6/30/14 (\$25 Late Fee Penalty)
- 9/3/2014 Complaint Investigation – 28 Total violations; 22 Class I violations; 6 Class II violations; 8 Repeat violations
- 4/8/2015 CRCF Administrator's License renewed 4/8/2015. The facility operated without a licensed Administrator for nearly a year (10 months)
- 9/3/2015 LLR Executed Consent Order - 1 Year Probationary status & \$3,356.80 fine due within 90 days
- 7/1/2015 Inspection – 22 Total violations; 13 Class I violations; 9 Class II violations; 9 Repeat violations
- 7/24/2015 DHEC executes letter to acknowledge receipt of final payment of \$500 penalty/\$5,000 held in abeyance/considered the facility to be in substantial compliance with Regulation 61-84 and the matter closed.

Total Violations	Class I	Class II	Repeat Violations
108	66	42	66

CRCF #4 (4 - 9 beds)

DHEC Inspections/Investigations/Enforcement Actions & LLR Enforcement Actions Initiated

- 12/16/2010 LLR executed a Consent Order - Administrator cited for operating an unlicensed CRCF (1 Year Probationary status & \$100 fine for each day that the facility operated as an unlicensed CRCF for a total fine of \$100 - w/in 30 days.
- 5/11/2012 Inspection – 10 Total violations; 7 Class I violations; 2 Class II violations
- 12/19/2012 Inspection – 4 Total violations; 4 Class I violations
- 6/5/2013 Inspection – 17 Total violations; 9 Class I violations; 8 Class II violations; 10 Repeat violations
- 10/31/2013 Complaint Investigation – 1 Total violation; 1 Class I violation; 1 Repeat violation
- 3/27/2014 Complaint Investigation – 3 Total violations; 3 Class I violations
- 4/24/2014 DHEC executed an Administrative Order – CRCF Owner fined \$5,000 for operating an unlicensed CRCF.
- 5/1/2014 DHEC executed a Consent Order based on the previous 3 inspections requiring a \$10,000 monetary penalty/\$3,600 payable within 12 month (\$300 monthly)/\$6,400 kept in abeyance.
- 6/25/2014 Inspection & Complaint Investigation – 56 Total violations; 51 Class I violations; 5 Class II violations; 31 Repeat violations
- 8/20/2014 Inspection – 33 Total violations; 28 Class I violations; 5 Class II violations; 29 Repeat violations
- 11/21/2014 Complaint Investigation – 5 Total violations; 5 Class I violations; 3 Repeat violations
- 7/9/2015 Inspection & Complaint Investigation – 34 Total violations; 33 Class I violations; 1 Class II violation; 13 Repeat violations
- 10/20/2015 Inspection & Complaint Investigation – 22 Total violations; 19 Class I violations; 3 Class II violations; 17 Repeat violations
- 2/4/2015 DHEC initiated a Call-in Penalty of \$8,800 within 30 days due to repeated violations, failure to pay fine as specified in the 5/1/14 Consent Order and operation of an unlicensed CRCF. DHEC established a payment acknowledgement/agreement upon the Administrator's request to make the final payment by 5/26/15.
- 5/26/2015 Final penalty (\$8,800) payment received by DHEC in accordance with the agreement. However, the CRCF has not paid the penalty (\$5,000) assessment pursuant to the Administrative Order executed 4/24/2014 for operating an unlicensed facility.

Total Violations	Class I	Class II	Repeat Violations
185	160	25	104

CRCF # 5 (10-50 beds)

DHEC Inspections/Investigations/Enforcement Actions & LLR Enforcement Actions Initiated

- 1/29/2010 Inspection & Complaint Investigation – 9 Total violations; 9 Class I violations
- 4/8/2010 Inspection – 15 Total violations; 15 Class I violations
- 6/1/2010 DHEC Imposed a Monetary Penalty based on the inspections above (\$4,200 monetary penalty)
- 12/22/2010 Administrative Law Court Consent Order assessed a civil penalty of \$4,200, of which \$2,700 was suspended (required to pay \$1,500 - \$300 monthly installments w/in 150 days)
- 5/18/2011 DHEC Letter to acknowledge receipt of final payment of \$1,500 penalty/\$2,700 suspended with execution of the Consent Order and the facility considered to be operating in substantial compliance of the regulations and the matter closed.
- 12/1/2011 LLR Executed Amended Consent Agreement - Fined \$1,411.50/Probationary status for 1 Yr
- 5/31/2012 Inspection & Complaint Investigation– 17 Total violations; 3 Class I violations; 14 Class II violations
- 9/27/2012 Inspection – 22 Total violations; 2 Class I violations; 20 Class II violations
- 12/13/2012 Inspection & Complaint Investigation – 18 Total violations; 9 Class I violations; 9 Class II violations; 15 Repeat violations
- 5/7/2013 Inspection & Complaint Investigation – 8 Total violations; 5 Class I violations; 3 Class II violations; 3 Repeat violations
- 9/26/2013 Inspection – 29 Total violations; 23 Class I violations; 6 Class II violations; 16 Repeat violations
- 2/28/2014 Inspection – 30 Total violations; 9 Class I violations; 21 Class II violations; 19 Repeat violations
- 9/11/2014 DHEC executed Consent Order based on the previous six inspections (\$20,000 monetary penalty/\$6,000 payment within 12 month installments/\$14,000 kept in abeyance)
- 11/24/2014 Inspection & Complaint Investigation – 24 Total violations; 10 Class I violations; 14 Class II violations; 16 Repeat violations
- 1/2/2015 LLR executed a Consent Agreement - Fined \$600/Probationary status for 1 Yr
- 2/25/2015 Inspection – 12 Total violations; 7 Class I violations; 5 Class II violations
- 6/11/2015 LLR executed a Consent Agreement - Fined \$2,100/Probationary status for 1 Yr
- 8/21/2015 Inspection & Complaint Investigation – 17 Total violations; 10 Class I violations; 7 Class II violations; 3 Repeat violations
- 9/24/2015 DHEC Letter to acknowledge receipt of final payment of \$6,000 penalty/\$14,000 held in abeyance and the facility considered to be operating in substantial compliance of the regulations and the matter closed.

Total Violations	Class I	Class II	Repeat Violations
201	102	99	72